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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Vijay Kumar Shrivastava, J.

WRIT PETITION NO. 3247 OF 2006

Petitioner : Salil Lawrence, S/o Late Shri K.C. Lawrence, Aged about 47 years, R/o Railway Bungalow No.42/2, Control Chaal, Mohan, Nagpur (M.S.), General Secretary, South Eastern Central Railway Men's Union, Bilaspur (C.G.).

Versus

Respondents :

1. Union of India – through the Secretary, Railways, Rail Bhawan, Rafi Ahmed Kidwai Marg, New Delhi.
2. The Railways Protection Force through its Divisional Security Commandant, Railways Protection Force, Bilaspur (C.G.).
3. The South East Central Railways, through its General Manager, South East Central Railways, Bilaspur (C.G.).

Present :- Mr. P.K. Bhaduri, counsel for the petitioner.

Ms. Yoshita M, Advocate appears on behalf of Mr. Amit Choudhary, counsel for the respondents.

(ORAL ORDER)
(Passed on 21st December, 2006)

This petition under Article 226/227 of the Constitution of India has been instituted for following directions and to restrain Railway Protection Force, Bilaspur (henceforth 'RPF') from disposing of Police Dog – "Moti" to suitable dog lover as planned by them :

> "That the RPF be directed to make proper arrangement for food and lodging of "Mothi" and provide him attendants who would be employed

exclusively for him to look after him and his needs.

That the RPF be directed to provide for proper medical check-ups of "Mothi" at regular intervals and that he be provided with all care and comfort as would be necessary.

That "Mothi" be paid a pension, which shall be sufficient to cover his expenditure in days to come."

2) RPF Police Dog namely "Moti" was born on 5-11-1997. It is a Doberman Pincher by breed. The dog was used by RPF for purposes of providing security to Railway properties and also used to track down criminals who committed crime on board trains or in vicinity of the Railway set ups. The dog rendered its services to RPF in carrying out numerous search, rescue operations, helped them to nab criminals and to detect explosives, narcotics etc. After due examination, the dog has been declared unfit for Police duty by Veterinary Doctor, therefore, in order to dispose of the dog, RPF planned to donate it to suitable dog lovers.

3) Petitioner, who is a General Secretary of South Eastern Central Railway Men's Union, Bilaspur, claiming himself to be animal lover having a fundamental duty under Article 51A(g) of the Constitution of India, which provides fundamental obligation on citizen of India to have compassion for living creatures, has instituted this petition, ***inter alia***, contending that the dog Moti has rendered valuable services to the Department, the same cannot be ignored and, therefore, a duty has been cast on the Department that instead of disposing of the dog by donating the same to suitable dog lovers, they should provide all facilities and amenities, which the dog was availing during its service tenure for the rest of its years.

4) Respondents contested the petition, *inter alia*, on the ground that they have not ignored the services of Dog Moti. They are taking proper care and attention. They never abandoned the dog. The dog rendered its services from 21-1-1998. On 8-5-2006 the dog was ill, therefore, it was kept under treatment of Dr. R.M. Tripathi, Residency Veterinary Officer of Divisional Veterinary Hospital, Bilaspur, who on 11-5-2006 after due examination, certified that the Dog Moti has become depressed, sluggish, was loosing its stamina, even not responding to the treatment and was not fit for Police duty, therefore, he recommended for culling and disposal of the dog. According to directions of Railway Board, the dog, which is unfit for Police duty, is to be auctioned or donated to dog lover. Chief Security Commissioner, RPF was apprised with those facts, who vide letter dated 1-6-2006 directed to dispose of the dog by auction. Accordingly, auction sale notice was published. Subsequently, the proposed auction has been called off due to some administrative reasons. Presently the dog Moti is being looked after with due care. There is no provision for pension to the dogs. Railway authorities are doing everything according to the established procedure and nothing inhuman has been done to dog Moti. Petitioner may be a dog lover, but no credentials have been submitted by him. Petitioner does not have any *locus standi* to institute such a petition, neither he belongs to organization for care of animals nor is in any way connected to dog Moti. The petitioner has filed the present petition only with an intention to harass Railway administration without enquiring into the factual legal position.

5) During the course of arguments, it was brought to the notice of this Court that College of Veterinary Science & Animal Husbandry, Anjora,

Durg, certified that they will be pleased to maintain the dog, if it is donated to them. The College has all the facilities for maintaining L.S. species. On receiving certification, the RPF disposed of the Dog Moti by donating it to Dean, College of Veterinary Science & Animal Husbandry, Anjora, Durg, who received and accepted to maintain the dog.

6) Learned counsel for the petitioner relying upon the decision of the Hon'ble Apex Court rendered in the matter of **State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and others**[1] contended that dog Moti, which rendered its valuable services to RPF, though declared unfit for Police duty is entitled for all facilities which were earlier available when dog "Moti" was fit for rendering services to the Department in consonance with Article 51A(g) of the Constitution of India. Article 51A(g) of the Constitution of India reads as below :

> (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

7) Admittedly petitioner is a union leader occupying the seat of General Secretary, South Eastern Central Railway Men's Union, Bilaspur, there is nothing to show that he is an animal lover or in any way he is related to welfare of dogs or is related with the dog Moti. Fundamental duties are not enforceable, but if the State seeks to promote any of the duties by enactment or otherwise its constitutionality can be reviewed by the Court having regard to the directive principles as well as fundamental duties.

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[1] 2005 AIR SCW 5723

8) Here in the instant case petitioner without disclosing any serious material to show how non compassion for living creatures have been done by the RPF, has instituted this petition only on the ground that RPF has planned to donate the dog Moti to dog lovers.

9) Government of India, Ministry of Railways vide letter No.80/Sec (Cr)/Disbtn/62 New Delhi, dated 24-8-1993 issued the following directions :

> "In supersession of earlier instruction issued under this office letter No.71/Sec(E)/ 125/6 dated 20-10-71, it has been decided that whenever the old dogs of the dog squad of zonal Railways are to be considered for retirement from the Railways Services on the advice of the Vet. Surgeon or otherwise, the CSOs should make specific recommendation to the Board's office for their disposal instead of giving to them to dog loving persons free of cost or putting them to eternal sleep by giving painless injection through the Vet. Surgeon. Their disposal, thus be undertaken only on the advice of the Board's Office."

10) In 1995, the Senior Security Commissioner vide letter No.94/Sec/ AES/DS/3/1 dated 6-9-95 issued the following instructions :

> "Various railways are asking DG's office for promotion/clearance for further action whenever dogs are declared unfit for Police duties due to con-genital defects, terminal diseases, severe injury and other reasons. It is clarified that whenever a dog becomes unfit for police duties, the dog may be auctioned/ donated to dog lovers as per extant instructions by the CSC's without waiting for any further instructions clearanced from this office. Where the dog is suffering from terminal disease/severe injury etc. and the veterinary doctor is of the opinion that medical treatment will not be make the dog serviceable, the dogs may be put to sleep without seeking/waiting for clearance/permission from this office. An early action will reduce the suffering

undergone by the dogs. This office may be advised only of the action taken."

11) The *vires* of instructions regarding disposal of old dogs of RPF issued by the Government of India and Senior Security Commissioner are not in challenge, therefore, RPF is bound to obey those instructions and accordingly if they planned to donate the dog Moti to dog lovers that was not against the instructions of the Government. Even otherwise, if a dog is donated to dog lover, how it can be assumed that it is violative of fundamental duties. If a dog lover accepts a dog to keep and maintain it properly, that itself shows and establishes that fundamental duty "compassion for living creatures" has been adhered to.

12) Dog – Moti has been given to College of Veterinary Science & Animal Husbandry, Anjora, Durg, a Government Institution, they have all facilities for maintaining such dogs and there is no material to show that the Institution is treating the dog with any cruelty or in non compassion manner.

13) From the material on record, it is as crystal as clear that dog Moti remained unfit for Police duty and till the dog Moti was given to College of Veterinary Science & Animal Husbandry, Anjora, Durg, the dog was provided all the facilities and amenities as per norms by the RPF. Even there was a Kennel of dog Moti in RPF Complex, Budhwari Bazar, Bilaspur and handler & support handler have been provided to take care of the dog. An amount of Rs.1775/- was being utilized by the In-charge of the dog squad for food, grooming, medical treatment etc., on the dog Moti. Now the dog is in custody of a Government Institute, which is acquainted with the maintenance of such dog. There is nothing to show that

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Veterinary College, which took the dog in its custody, is in any way behaving with the dog "Moti" in non-compassion manner.

14) Neither Government of India has made any provision for pension nor for keeping all those dogs which are unfit for duty in their custody till their death. In absence of those provisions, fundamental duty "compassion for living creatures" does not loose its sanctity, till it is established that dog is being treated with cruelty or in non-compassion manner. The Courts are not required to interfere in action taken by the authorities which they took keeping in view the larger interest of people/society, without causing hurt to fundamental duties.

15) In the result, I am of the opinion that neither the petitioner has any *locus standi* to institute the instant writ petition nor there is any material to establish that RPF has no compassion for its Dog – "Moti", therefore, the instant writ petition deserves to be dismissed and is accordingly dismissed. No costs.

Sd/-
V.K. Shrivastava
Judge

Gowri